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IN THE
Supreme Court of the United States

OCTOBER TERM, 1943.

No. 157.

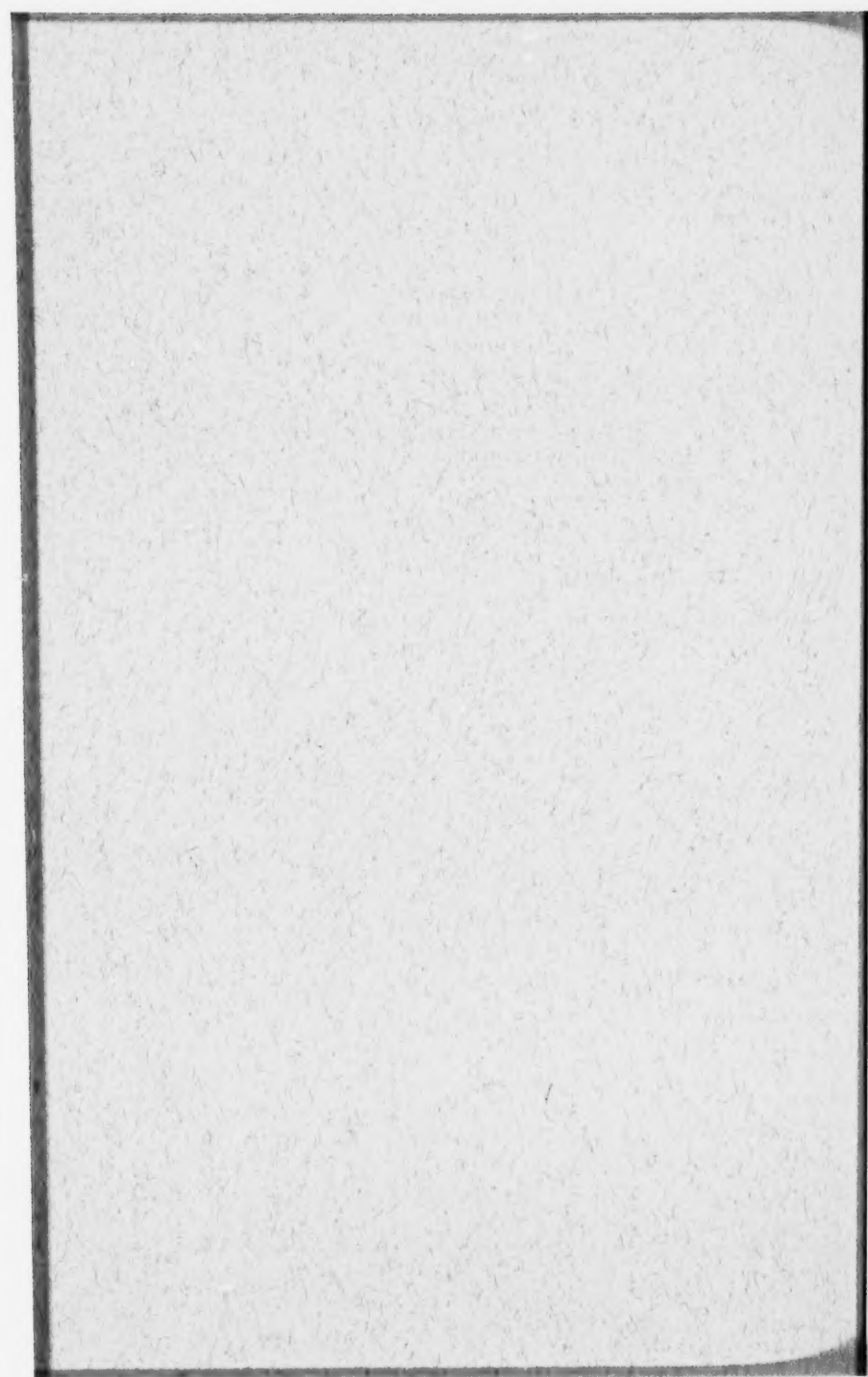
UNITED STATES OF AMERICA, EX REL. ARTHUR JOHNSTON,
Petitioner,

v.

PETER B. CAREY, Sheriff of Cook County, Illinois,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT, AND BRIEF IN
SUPPORT THEREOF.**

BRIEN McMAHON,
Counsel for Petitioner.



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v.

PETER B. CAREY, Sheriff of Cook County, Illinois,
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**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.**

The petitioner, Arthur Johnston, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit entered on May 8, 1944 (R. 41), denying the Petition for Rehearing of the judgment of that Court on April 17, 1944 (R. 28-30), affirming the judgment of the District Court of the United States for the Northern District of Illinois, Eastern Division, on October 4, 1943 (R. 16, 17), sustaining the demurrer to petition for writ of habeas corpus, quashing the writ, and remanding relator to the custody of the Sheriff of Cook County.

OPINIONS BELOW.

The judgment of the District Court of the United States for the Northern District of Illinois, Eastern Division (R. 16, 17), is not reported. The opinion of the Circuit Court of Appeals (R. 28-30) is not yet reported.

JURISDICTION.

The judgment of the Circuit Court of Appeals denying the Petition for Rehearing was entered on May 8, 1944. The jurisdiction of this Court is invoked under Sec. 240(a) of the Judicial Code as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by the Court on May 7, 1934.

QUESTIONS PRESENTED.

1. Whether the Court erred in holding that petitioner has failed to exhaust his remedies in the State Courts.
2. Whether the Court erred in affirming the judgment of the District Court sustaining the demurrer to the petition for writ of habeas corpus.
3. Whether petitioner was denied his Constitutional right to be not deprived of liberty without due process of law by failure of the District Court to hear testimony on facts alleged in petition for writ of habeas corpus.

STATUTES INVOLVED.

- R. S. Sec. 751; United States Code, Title 28, Sec. 451.
- R. S. Sec. 752; Act of February 13, 1925, 43 Stat. 940; United States Code, Title 28, Sec. 452.
- R. S. Sec. 754; United States Code, Title 28, Sec. 454.
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- R. S. Sec. 756; United States Code, Title 28, Sec. 456.
- R. S. Sec. 757; United States Code, Title 28, Sec. 457.
- R. S. Sec. 758; United States Code, Title 28, Sec. 458.
- R. S. Sec. 759; United States Code, Title 28, Sec. 459.

R. S. Sec. 760; United States Code, Title 28, Sec. 460.

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Constitution of the United States, Amendments V and XIV.

See Appendix. —

STATEMENT.

Petitioner was indicted in the Criminal Court of Cook County, Illinois, on October 31, 1941, in an indictment charging petitioner, with one Goldberg, Guralnik, and Poznansky, in three counts: (1) with robbery with a gun, (2) simple robbery, and (3) buying and receiving certain stolen furs which formed the subject of the first two counts (R. 2, 3, 14). On March 23, 1942, a separate trial was granted defendants Goldberg, Guralnik, and Poznansky and counts 1 and 2 against petitioner were dismissed (R. 3, 14). Brought to trial before a petit jury he was found guilty on March 25, 1942 (R. 3, 14). None of the stolen property was found in petitioner's possession or produced at the trial and he was convicted solely on the testimony of the said accomplices Goldberg, Guralnik, and Poznansky (R. 3, 14), who testified that certain furs had been seized by them in an armed robbery on October 16, 1941, and on the same day sold and delivered to petitioner (R. 3). On April 9, 1942, Goldberg, Guralnik, and Poznansky were placed on probation by the judge of the trial court (R. 3), which court on April 7, 1942, had sentenced petitioner to a term of one to ten years in the State Penitentiary (R. 3). On appeal direct to the Supreme Court of the State of Illinois the decision of the Criminal Court was affirmed (R. 3, 4), and the Supreme Court denied a petition for rehearing (R. 4). Shortly after May 15, 1943, petitioner was taken into custody by the Sheriff of Cook County pending removal to the State Penitentiary (R. 4). In the meantime and while the appeal was being considered in the Supreme Court of the State of Illinois, and after the term of court which had convicted petitioner had expired, four police officers of the City of Chi-

cago searched the home of Poznansky, one of petitioner's codefendants, and found secreted therein a large portion of the stolen property which Poznansky, Goldberg, and Guralnik had testified under oath had been stolen and sold to petitioner on October 16, 1941 (R. 4). Petitioner thereupon on June 15, 1942, filed a petition in the Criminal Court of Cook County under Section 72 of the State Practice Act, providing for the correction of errors of fact in judicial records, a form of procedure replacing the former writ of error coram nobis (R. 4). Petitioner requested a trial by jury on the issues of fact, which was refused by the Criminal Court and the case decided against petitioner (R. 4, 11-13). An appeal was taken to the Supreme Court of the State of Illinois which on March 16, 1943, affirmed the judgment of the Criminal Court (R. 4, 5). Petition for rehearing was filed and denied on May 14, 1943 (R. 5). Having apparently exhausted his remedies in the State Courts, petitioner filed petition for writ of habeas corpus on June 3, 1943, in the District Court of the United States for the Northern District of Illinois, alleging that he had been convicted solely on perjured testimony, thus being deprived of his liberty without due process of his rights under the Fourteenth Amendment to the Constitution of the United States (R. 5). Demurrer to the petition was sustained (R. 14-16), and on appeal to the Circuit Court of Appeals for the Seventh Circuit the judgment of the District Court was affirmed (R. 28-30). Petition for rehearing was filed and denied on May 8, 1944. Urged by petitioner on appeal from the District Court is (1) that the court erred in sustaining the demurrer to the petition for writ of habeas corpus, (2) that the court erred in failing to hold a hearing to determine whether petitioner had been convicted on perjured testimony, (3) that the court erred in refusing to hear evidence which would indicate exceptional circumstances and the existence of peculiar urgency for intervention of a Federal Court, and (4) that petitioner is deprived of his liberty without due process of law in violation of the Constitution of the United States.

